

[COUNSEL LISTED ON NEXT PAGE]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANN ROSS, DENNIS RAMOS, MAURITA) Case No. C 07-2951 SI
PRASAD, TAMARA BURKHART, NANETTE)
RENEE HOUSKEN, and KELLY SMITH,) **PARTIES' STIPULATION AND**
individually and on behalf) **PROPOSED ORDER REGARDING**
of all others similarly situated,) **DEFENDANT'S MOTION FOR**
) **PARTIAL SUMMARY JUDGMENT RE**
) **THE EIGHTH CAUSE OF ACTION AND**
) **PLAINTIFF ROSS**
Plaintiffs,)
)
v.) Date: October 3, 2008
) Time: 9:00 a.m.
) Department: 10
U.S. BANK NATIONAL ASSOCIATION, DBA)
DEFENDANT,) Hon. Susan Illston
)
Defendant.)
)
)
)
)
)

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Attorneys for Plaintiffs Ross, Ramos, Prasad, Burkhart, Housken and Smith

1 1. Defendant has moved for partial summary judgment to dismiss Plaintiffs' Eighth
2 Cause of Action, as pled in the Second Amended Complaint. In the Eighth Cause of Action,
3 Plaintiffs seek so-called "waiting time" penalties, including penalties under California Labor Code
4 Section 203. Defendant's motion does not address Plaintiffs' claims for waiting time penalties as
5 a measure of damages should they prevail on their other causes of action, but rather seeks partial
6 summary judgment as to a stand-alone claim, both as to the Plaintiffs and the class the Plaintiffs
7 assert. A "stand-alone" claim is one that is based on an allegation that Defendant failed to pay the
8 Plaintiffs' final paycheck within the time allowed by law and is not merely derivative of other
9 causes of action in the Second Amended Complaint.

10 2. The parties have conferred in an attempt to resolve the above motion with respect
11 to Plaintiff Ann Ross.

12 3. The parties stipulate that Defendant U.S. Bank National Association paid Plaintiff
13 Ross a final paycheck within the time allowed by California Labor Code Sections 201 to 203 and
14 that therefore Plaintiff Ross is not entitled to a stand-alone waiting time penalty under Section
15 203.

16 4. Plaintiff Ross does not agree that her final paycheck included all wages that she
17 may be owed under the other causes of action. The parties further stipulate that Plaintiff Ross
18 retains the right to attempt to prove, and Defendant retains the right to contest, that Ross is entitled
19 to a derivative Section 203 penalty as a measure of damages if she prevails on other causes of
20 action that entitle her to additional wages.

21 5. The parties further stipulate that Plaintiff Ross lacks standing to be a class
22 representative for any class of former employees asserting a stand alone waiting time penalty
23 claim, as defined above.

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2 6. The parties stipulate that the Court should grant Defendant's motion for partial
3 summary judgment for Plaintiff Ross's claim under the Eighth Cause of Action as stated below.

4
5 DATED this 12th day of September 2008.

6
7 BAILEY PINNEY, PC

8 By: /s/ Jose R. Mata
9 Jose R. Mata

10 Attorneys for Plaintiffs
11 ROSS, RAMOS, PRASAD, BURKHART,
HOUSKEN, and SMITH

12 DAVIS WRIGHT TREMAINE LLP

13
14 By: /s/ Judith Droz Keyes
Judith Droz Keyes

15 Attorneys for Defendant
16 U.S. BANK NATIONAL ASSOCIATION

ORDER

PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS ORDERED that Defendant's motion for partial summary judgment on Plaintiffs' Eighth Cause of Action as to Plaintiff Ann Ross is granted as follows:

1. The Court finds that Plaintiff Ross was paid her final paycheck within the time allowed by California Labor Code Sections 201 to 203 and therefore, she does not have a stand-alone waiting-time penalty claim. The Court therefore dismisses the Eighth Cause of Action in the Second Amended Complaint as to Plaintiff Ross.

2. Nothing in this Order affects any right Plaintiff Ross may have to assert, or any right Defendant has to contest, either that Ross's final paycheck did not include all wages due to her under other causes of action in the Second Amended Complaint or that as a remedy she is entitled to seek a derivative California Labor Code Section 203 penalty.

3. The Court finds that Plaintiff Ross lacks standing to be a class representative for any class of former employees asserting a claim under the Eighth Cause of Action in the Second Amended Complaint, that is, a stand-alone waiting time penalty claim.

4. This Order does not affect the other named plaintiffs or putative class members. The remainder of Defendant's motion for partial summary judgment on Plaintiffs' Eighth Cause of Action shall be addressed by a separate order.

Dated: September __, 2008

By



Susan Illson

UNITED STATES DISTRICT JUDGE